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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/783,889

02/20/2004

Roger P. Jackson

10,193

6965

7590

09/18/2008

John C. McMahon
PO Box 30069
Kansas City, MO 64112

EXAMINER

COMSTOCK, DAVID C

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

09/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/783,889	Applicant(s) JACKSON, ROGER P.	
	Examiner DAVID COMSTOCK	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 298 10 798 U1 (Shafer) (cited by applicant).

Shafer discloses the claimed invention including a threaded bone screw device 1 comprising an open head formed by a pair of spaced apart arms 4 and a cylindrical closure 3 (see, e.g., Figs. 1 and 2). The arms define a receiving channel for a bone fixation rod 2. Facing surfaces of the arms define guide and advancement structure 9 for rotatable mating with a guide flange on the closure. The guide flange is continuous and helical and has a compound contour including an enlarged outer periphery with an inward facing component. A multi-surface 14 hexagonal aperture 13 extends partially through the closure for engagement with a tool. The device comprises a break off installation head. It is noted that the flange (thread) is considered to have a compound contour because it is a reverse angle thread and/or lobular (i.e. Figs. 1 and 2) *and* it extends helically. Thus, as between several different points in any given region of the helically extending flange, there is a compound curvature. It is further noted that the

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translation provided by Applicant teaches not only that the device has threads but that the anti-splay grub screw is screwed in. The threads are helically wound and satisfy the claims as set forth in the rejection. A translation of Shafer referring to Fig. 2 reads:

In the exemplary embodiment shown in Figure 2, the bifurcated head 4 of the bone screw 1 likewise has a thread, which, however, has a top flank 11 and a bottom flank 10 embodied in a stepped fashion. The shoulder of the bottom flank 10 is shaped such that it forms an undercut 17. This undercut 17, particularly by means of the shoulder 18, prevents the legs 5 from being bent radially outward while the grub screw 3 is being screwed in. A positive lock is thus produced in the radial direction between the bifurcated head 4 and grub screw 3. This positive lock prevents, as previously mentioned, any slippage of the leg 5. (emphasis added)

It is quite clear that Shafer discloses a "threaded" structure (i.e., a *helically wound* flange structure.

Claims 21-23 are rejected under 35 U.S.C. 102(a) as being anticipated by Morrison et al. (6,296,642; cited by Applicant).

Morrison et al. disclose a medical device comprising a threaded shank 10 and a cylindrical body 12. The shank includes an open head 11 formed by a pair of spaced arms 20 defining a channel 16 therebetween. The head includes mutually facing surfaces with guide and advancement structures 44 that mate with complementary structures on the cylindrical body. The structures comprise a continuous helical flange having reverse angle threads facing the closure axis of the device (see Fig. 3). The body includes a multi-surface aperture forming a socket for a tool and a break-off installation head also having such an aperture. Morrison et al. disclose using either hexagonal or star-shaped (i.e. "multi-surface") tool socket forms (see, e.g., col. 4, lines 2-4). It is noted that the flange (thread) is considered to have a compound contour

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because it is a reverse angle thread *and* it extends helically. Thus, as between several different points in any given region of the helically extending flange, there is a compound curvature.

Response to Arguments

Applicant's arguments filed 13 June 2008 have been fully considered but they are not persuasive. Moreover, Examiner's position regarding Shafer is based on explicit language in the reference and is fully set forth above. Applicant failed to respond to the outstanding rejection over Morrison et al.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-

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4710. Please leave a detailed voice message if examiner is unavailable. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David Comstock/
Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733